

Message Text

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TAGS: PORG, AORG, UN, XG, CA, XA, BE

SUBJECT: APPLICABILITY OF MINIMUM WAGE TO FOREIGN DOMESTIC EMPLOYEES
OF INTERNATIONAL ORGANIZATION STAFF MEMBERS

REF: STATE 311189

1. FOLLOWING ANSWERS ARE KEYED TO QUESTIONS IN PARA 4 REFTTEL:

A. ACCORDING TO BELGIAN LEGISLATION DOMESTIC PERSONNEL ARE
A DISTINCT CATEGORY OF EMPLOYEE, WHO COME UNDER A CONTRACT
DESIGNED FOR THEM. THERE IS NO SEPARATE COLLECTIVE BARGAINING
AGREEMENT FOR DOMESTICS BUT THEY ARE PROTECTED BY THE PROVI-
SIONS OF THE INTERINDUSTRY ACCORDS, CONCLUDED BETWEEN LABOR
AND MANAGEMENT. UNDER THE INTERINDUSTRY ACCORD IN FORCE,
THE PRESENT MONTHLY GROSS MINIMUM WAGE IS 18,524 BF. THIS
MINIMUM IS TIED TO THE CONSUMER PRICE INDEX; BESIDE THE
MINIMUM WAGE PROVISIONS, THE INTERINDUSTRY ACCORDS ALSO
PROVIDE FOR VACATIONS, WORKING CONDITIONS AND PENSIONS.

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AN EXCEPTION IS MADE, HOWEVER, FOR HOURS. IN BELGIUM,
DOMESTIC EMPLOYEES ARE ALSO COVERED BY SOCIAL SECURITY
(MEDICARE, DISABILITY, PENSIONS AND ANNUAL VACATIONS)
AND THE EMPLOYER IS REQUIRED TO PAY CONTRIBUTIONS FOR
HIS DOMESTIC PERSONNEL.

DOMESTIC SERVICE IS A SECTOR OF HEAVY MOONLIGHTING

WHICH MAKES GOVERNMENT CONTROL VERY DIFFICULT. ONLY A FEW DOMESTIC EMPLOYEES BELONG TO A UNION AND FEW TAKE LEGAL STEPS TO HAVE THEIR RIGHTS PROTECTED.

B. NOT APPLICABLE.

C. THE BELGIAN GOVERNMENT DOES NOT SYSTEMATICALLY INFORM DIPLOMATIC MISSIONS OF REGULATIONS IN FORCE WITH RESPECT TO DOMESTIC EMPLOYEES IF THE BELGIAN FOREIGN MINISTRY LEARNS THAT A DIPLOMATIC MISSION IS NOT APPLYING THE REGULATIONS, THE MINISTRY WILL "HELP" THE MISSION, BUT THE MINISTRY'S POLICY IS TO AVOID DIFFICULTIES WITH DIPLOMATIC MISSIONS OVER THE ISSUE. A FOREIGN MINISTRY OFFICIAL TOLD US THAT HE HAD NO ILLUSIONS ABOUT LABOR AND SOCIAL SECURITY INSPECTIONS BEING ABLE TO CONTROL DIPLOMATIC MISSIONS IF THEY DO NOT CHOOSE TO OBEY THE APPLICABLE LAWS AND REGULATIONS. THE FOREIGN MINISTRY WILL INTERVENE WITH A DIPLOMATIC MISSION ONLY ON THE COMPLAINT OF AN INDIVIDUAL EMPLOYEE.

D. IN COMPUTING THE MINIMUM WAGE, ROOM AND BOARD AND OTHER ADVANTAGES IN KIND ARE INCLUDED ACCORDING TO AN OFFICIAL SCALE. THE COST OF THESE PERQUISITES ARE THUS DEDUCTIBLE FROM THE MINIMUM WAGE.

E. THE GENERAL RULE IN BELGIUM IS THAT ALL EMPLOYERS EMPLOYING DOMESTIC PERSONNEL ARE BOUND BY BELGIAN LAW. BELGIUM HAS CONCLUDED ACCORDS ON THE EMPLOYMENT OF LIMITED OFFICIAL USE

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PERSONNEL WITH VARIOUS INTERNATIONAL ORGANIZATIONS AND COUNTRIES. SUCH ACCORDS TAKE VARIOUS FORMS INCLUDING CONSULAR CONVENTIONS, AGREEMENTS WITH INTERNATIONAL ORGANIZATIONS AND BILATERAL SOCIAL SECURITY AGREEMENTS. FOREIGN MINISTRY OFFICIALS INFORMED US THAT IN GENERAL THESE ACCORDS STIPULATE THAT FOR BELGIAN NATIONALS LOCAL LEGISLATION SHOULD BE APPLIED. FOR THIRD COUNTRY NATIONAL AN AD HOC AGREEMENT IS OFTEN CONCLUDED LEAVING THE CHOICE BETWEEN BELGIAN AND EMPLOYER'S COUNTRY'S OWN LEGISLATION. THESE AGREEMENTS COVER PERSONNEL IN GENERAL. THERE ARE NO SEPARATE AGREEMENTS FOR DOMESTIC EMPLOYEES.

IN THE ABSENCE OF SPECIFIC AGREEMENTS ON DOMESTIC PERSONNEL, DIPLOMATS AND DIPLOMATIC MISSIONS ARE SUPPOSED TO APPLY BELGIAN LABOR AND SOCIAL SECURITY LEGISLATION. THIRD COUNTRY NATIONALS EMPLOYED BY DIPLOMATS AND DIPLOMATIC MISSIONS ARE SUPPOSED TO BE PROPERLY COVERED, THOUGH NOT NECESSARILY UNDER BELGIAN

LAW.

THE BELGIAN FOREIGN MINISTRY ISSUES A SPECIAL RESIDENCE
PERMIT FOR THIRD COUNTRY NATIONALS EMPLOYED AS DOMESTIC
PERSONNEL AT EMBASSIES AND INTERNATIONAL ORGANIZATIONS
THIS ELIMINATES THE NEED FOR SUCH PERSONNEL TO APPLY
FOR A WORK PERMIT.

F. THE GENERAL LEGISLATION ON HOURS IS NOT APPLICABLE
TO DOMESTIC EMPLOYEES AND SO FAR NO COLLECTIVE BARGAINING
AGREEMENT HAS BEEN CONCLUDED ON HOURS FOR THEM. LOCAL
CUSTOM MAY SERVE TO RESTRICT HOURS WORKED TO SOME DEGREE.

2. COMMENT: AN ISSUE SUCH AS THE ONE WHICH AROSE IN
THE CASE OF THE EMPLOYEES OF UNDP STAFF MEMBERS IN
NEW YORK HAS NOT YET ARISEN HERE. IT IS CLEAR THAT
BELGIAN LAW AND PRACTICE DOES NOT EFFECTIVELY COVER
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SUCH SITUATIONS IF THE EMPLOYING DIPLOMAT, MISSION OR
INTERNATIONAL ORGANIZATION DOES NOT CHOOSE TO FOLLOW
BELGIAN LAW AND CUSTOM.
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